

# Guidance on the Cap-and-Invest Program's beneficial holdings prohibition

The Washington Department of Ecology is issuing this notice to provide guidance regarding Ecology's interpretation of the prohibition on holding Washington Cap-and-Invest compliance instruments on behalf of another party in [WAC 173-446-400\(8\)](#). This provision prohibits registered entities from holding compliance instruments on behalf of another party having an interest in or control of the compliance instruments:

A registered entity may only hold compliance instruments for its own use and may not hold compliance instruments on behalf of another party having an interest in or control of the compliance instruments. [WAC 173-446-400\(8\)](#).

The purpose of this provision of the rule is to prohibit entities from evading purchasing and holding limits<sup>1</sup> by controlling allowances through multiple entities and to maintain Ecology's ability to review transactions for adherence to chapter [173-446 WAC](#). The provision prohibits another party from exercising a degree of control or interest over the compliance instruments held by a registered entity that rises to a level such that the registered entity holds the compliance instruments "on behalf of" that other party.

This prohibition does not restrict a registered entity from entering into a financing agreement where Washington compliance instruments in the registered entity's general holding account are used as collateral and the secured party (a person in whose favor a security interest is created or provided for under a security agreement) can only exercise control of the registered entity's allowances in the event of default. Additionally, secondary market transactions such as futures or bilateral (forward) contracts are not a violation of this prohibition as long as such transactions are in adherence with the other provisions of chapter [173-446 WAC](#) and [RCW 70A.65](#). Upon request by Ecology, entities may be required to submit documentation and other information to Ecology to confirm that any financing agreement or transaction agreement is in compliance with chapter [173-446 WAC](#) and [RCW 70A.65](#). [WAC 173-446-120\(4\)\(b\)](#); [WAC 173-446-410\(1\)\(d\)](#); [WAC 173-446-600\(2\)](#).

Emissions-intensive, trade-exposed facilities (EITEs) whose operations are curtailed are restricted from trading, selling, or transferring previously allocated no-cost allowances to another entity, other than to a new operator of the facility, per [RCW 70A.65.110\(6\)](#). Additionally, curtailed EITEs that are later fully closed are required to transfer no-cost allowances to the [Emissions Containment Reserve](#), per [RCW 70A.65.110\(6\)](#). These restrictions on no-cost allowances for EITEs should be taken into consideration in any financing arrangement.



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To request an ADA accommodation, contact Ecology by phone at 360-407-6800 or email [leah.baird@ecy.wa.gov](mailto:leah.baird@ecy.wa.gov), or visit <https://ecology.wa.gov/accessibility>. For Relay Service or TTY call 711 or 877-833-6341.

<sup>1</sup> Purchase and Holding Limits are limits to the number of allowances purchased by an entity in each auction and allowances held in an entity's accounts as described in [WAC 173-446-330](#) and [WAC 173-446-150\(2\)](#).